IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.781 OF 2000

Dilip Shivram Desai .. Petitioner

Versus

Pradeep Vishnu Puranik & Anr. .. Respondents

Mr.V.P.Sawant i/b. V.C.Ghosalkar for petitioner

None for respondent No.1.

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th December 2005.

P.C.

. Heard Mr.Sawant appearing for petitioner. None appears for respondent No.1, though served.

Learned A.P.P. appears for respondent No.2.

2. The only contention of Mr.Sawant, learned Counsel appearring in support of this petition is that upon a complaint being made by the first respondent alleging offences punishable under section 193 of Indian Penal Code, the learned Judge while taking on record the application filed by first respondent was obliged to follow the provisions contained in Chapter XVI of Cr.P.C. He submits that section 193 of Penal Code prescribes for punishment for false evidence. It postulates intentionally giving false evidence at any stage of judicial proceedings or fabricating false evidence for the purpose of being used in any stage of judicial proceeding. The said offence has to be taken cognisance of by following the mandate of section 195 of Cr.P.C. Thereafter, Mr.Sawant invites my attention to section 340 of Cr.P.C. and more particularly sub-section (1) thereof which

mandates a preliminary enquiry being held by the Court in which the proceeding is instituted before it makes a complaint with regard to the offences set out in Section 195(1)(b)(i) of Cr.P.C. While it is true that application can be made to a Court requesting it to file a complaint, before a decision is taken by the Court to institute a complaint, law postulates a preliminary enquiry which has admittedly not been held in the instant case. Any decision to proceed straight away in the matter is, therefore, untenable in law.

3. In my view, it is not necessary to pronounce upon this aspect in detail because all that the learned Dist. and Sessions Judge Kolhapur has done is to issue notice to petitioner. This notice is issued upon an application made by the first respondent herein, to that Court requesting it to hold preliminary enquiry in the matter as per section 340 of

Cr.P.C. and thereafter initiate/ file a complaint in writing to the concerned Magistrate. Therefore, this is not the stage at which it is necessary to pronounce upon legality of the enquiry or proceedings before the sessions court. Once, the application itself prays for holding preliminary enquiry and the petitioner is summoned to attend the same, then all such contentions as are raised before me can always be raised before trial court and it would be for the trial court to consider them and pass appropriate orders in accordance with law. Leaving all such contentions as also remedy of petitioner to assail the findings of preliminary enquiry, if adverse to him, open, present petition is disposed of.

(S.C.DHARMADHIKARI, J)